



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES
6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2867



The Kane Company, Inc.
135 Commerce Way
Portsmouth, NH 03801

Re: Flextronics International

PeasePease International Tradeport, Pease International Tradeport, Portsmouth, NH

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
AND HEARING
No. AF 01-034**

May 16, 2001

I. Introduction

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Water Division (the Division) to the Kane Company, Inc., pursuant to RSA 485-A:22 and Env-C 603.02. The Division is proposing that fines totaling \$6,000 be imposed against the Kane Company, Inc. for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. Parties

1. The Department of Environmental Services, Water Division, is an administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH.
2. The Kane Company, Inc. ("TKCI") is a NH Corporation having a mailing address of 135 Commerce Way, Portsmouth, NH 03801.

III. Summary of Facts and Law Supporting Claims

1. Pursuant to RSA 485-A:17, the Department of Environmental Services (DES) regulates significant alteration of terrain and erosion control through a permit program. Pursuant to RSA 485-A:6, VIII, the Commissioner of DES has adopted Env-Ws 415 to implement this program.
2. Pursuant to RSA 485-A:22, V, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations of, *inter alia*, RSA 485-A:17, Env- Ws 415, or any permit issued pursuant thereto. Pursuant to RSA 485-A:22, V, the Commissioner has adopted Env-C 603 to establish the schedule of fines for such violations.
3. The Kane Company, Inc. (TKCI) is the sub lessee of properties at Pease International Tradeport in Portsmouth, NH identified as 164 and 166 Corporate Drive. (the Property).
4. On November 7, 2000, DES issued Site Specific Permit #WPS-5745 (the Permit) to TKCI for a project on the Property identified as Flextronics International (Flextronics).

5. Condition No. 2 of the Permit states: Revised plans shall be submitted for permit amendment prior to any changes in construction details or sequences...
6. Condition No. 4 of the Permit states: The approved plans and supporting documentation in the project file are a part of this approval.
7. On November 27, 2000, DES personnel inspected the Property and documented that the site work was not in conformance with Condition No. 4 of the Permit in that the approved plans (The Plans) had not been followed. Specifically,
 - a. The detention ponds had not been excavated and constructed prior to the start of other site work.
 - b. Silt fence had not been installed in the northwest corner of the Property, and
 - c. Permit limits had been exceeded by the placement of soil stockpiles along the north end of Spruce Drive between Aspen Avenue and White Birch Drive.
8. At the inspection, Division personnel requested that the Items noted in 7.a. and b. above be corrected by December 4, 2000; the request was documented in a written inspection report (the Report). The Report was signed by a representative of Pro Con Construction (PCI), the general contractor for TKCI on the Property, and a copy was given to the PCI representative.
9. On December 11, 2000, Division personnel performed a follow-up inspection of the Property. During the inspection, it was documented that:
 - a. The detention ponds had not been completed as per the approved plans;
 - b. Silt fence had been placed in the northwest corner of the Property, but it had not been properly installed, that is, it had not been toed-in, and
 - c. The soil stockpiles mentioned in Item 7.c., above, were still in place.
10. On March 12, 2001, DES personnel performed a follow-up inspection of the Property. During the inspection, it was documented that:
 - a. Substantial work had been done on the detention ponds.
 - b. The silt fence in the northwest corner of the Property had been properly installed, and
 - c. There was an increase in non-permitted site disturbance, that is:
 - (1) The footprint of the soil stockpiles along Spruce Drive had been expanded by the placement of additional soil materials;
 - (2) The north end of White Birch Drive and the east end of Aspen Avenue were being used as construction roads; and
 - (3) Areas north and south of the east end of Aspen Avenue were being used as parking and construction staging areas.
11. TKCI did not submit revised plans for permit amendment prior to disturbing the site in excess of Permit limits, as noted above in items 7.c., 9.c. and 10.c.
12. On March 15, 2001, the Division issued Letter of Deficiency No. WD WQE 01-01 (the

LOD) to TKCI. The LOD cited as deficiencies that site disturbance exceeded permit limits as shown on the plans approved under the Permit (specifically the stockpiling of soils along Spruce Drive, the use of White Birch Drive and Aspen Avenue as construction roads, and the use of areas north and south of the east end of Aspen Avenue as parking and construction staging areas.

13. The LOD requested TKCI to submit amended plans showing all disturbance that exceeds Permit limits and appropriate temporary erosion control and stabilization measures by March 30, 2001.

14. The LOD was received by TKCI on March 20, 2001, as evidenced by a signed postal receipt.

15. As of April 18, 2001 DES had not received the amended plans requested in the LOD.

IV. Violations Alleged

1. In seven (7) instances identified in Items III.7., III.9., and III.10., above, TKCI has violated RSA 485-A:17 and Env-Ws 415.13(b) by failing to conform with the Condition No. 4 of the permit.

2. As identified in Item 11 above, TKCI has violated RSA 485-A:17 and Env-Ws 415.13(b) by failing to conform with the Condition No. 2 of the permit.

V. Proposed Administrative Fines

1. For the violation identified in No.1 above, Env-C 603.02(b)(1) specifies a fine of \$750. For the seven (7) violations noted above, the Division is seeking a total fine of \$5,250.

2. For the violation identified in No. 2 above, Env-C 603.02(b)(1) specifies a fine of \$750. For the violation noted above, the Division is seeking a total fine of \$750.

The total fine being sought is \$6,000.

VI. Hearing, Required Response

You have the right to a hearing to contest the Division's allegations before the fine is imposed. A hearing on this matter has been scheduled for **Monday, July 23, 2001 at 2:30 p.m. in Room C-110** of the DES offices at **6 Hazen Drive** in Concord, NH. **Pursuant to Env-C 601.06, you are required to respond to this notice.** Please respond **no later than June 15, 2001**, using the enclosed colored form as follows:

1. If TKCI plans to attend the hearing, please have an authorized representative sign the

appearance (upper portion) and return it to James Ballentine, DES Enforcement Paralegal, as noted on the form.

2. If TKCI chooses to waive the hearing and pay the proposed fine, please have the authorized representative sign the waiver (lower portion) and return it **with payment of the fine** to Mr. Ballentine.

3. If TKCI wishes to discuss the possibility of settling the case, please have the authorized representative sign the appearance and return it to Mr. Ballentine **and** call Mr. Ballentine to indicate TKCI's interest in settling.

TKCI is not required to be represented by an attorney. If TKCI chooses to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

If TKCI wishes to have a hearing but is unable to attend as scheduled, TKCI must notify Mr. Ballentine at least one week in advance of the hearing and request that the hearing be rescheduled. If TKCI fails to notify Mr. Ballentine in advance and does not have a representative attend the hearing, the hearing will be conducted in TKCI's absence in accordance with Env-C 204.09.

VII. Determination of Liability for Administrative Fines

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that TKCI committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that TKCI committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

- * Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that TKCI proves, by a preponderance of the evidence**, applies in this case:
 - 1. The violation was a one-time or non-continuing violation, **and** TKCI did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** TKCI did not benefit financially, whether directly or indirectly, from the violation.
 - 2. At the time the violation was committed, TKCI was making a good faith effort to comply with the requirement that was violated.
 - 3. TKCI has no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.

4. Other information exists which is favorable to TKCI's case which was not known to the Division at the time the fine was proposed.


*******IMPORTANT NOTICE*******

The hearing that has been scheduled is a formal hearing. The hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that **TKCI** committed the violation(s) alleged above and that the fine(s) should be imposed.

The hearing is TKCI's opportunity to present testimony and evidence that TKCI did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced. If TKCI has any evidence, such as photographs, business records or other documents, that TKCI believes show that TKCI did not commit the violation(s) or that otherwise support TKCI's position, TKCI should bring the evidence to the hearing. TKCI may also bring witnesses (other people) to the hearing to testify on TKCI's behalf.

If TKCI wishes to have an informal meeting to discuss the issues, TKCI must contact Mr. Ballentine at (603) 271-6072 to request a prehearing conference.

Information regarding this proposed fine may be made available to the public via the DES Web page (www.state.nh.us.des). If TKCI has any questions about this matter, please contact James Ballentine, DES Enforcement Paralegal, at (603) 271-6072.

COPY

Harry T. Stewart, P.E., Director
Water Division

Enclosure (NHDES Fact Sheet #CO-2000)

cc: Gretchen Rule, DES Enforcement Coordinator
Susan Alexant, DES Hearings and Rules Attorney
Pease Development Authority
Denise Frappier, DES Site Specific

***** RETURN THIS PAGE ONLY *****

APPEARANCE

____ On behalf of TKCI I will attend the hearing scheduled for **Monday, July 23, 2001 at 2:30 p.m.** in **Room C-110** of the DES offices at **6 Hazen Drive** in Concord, NH.

Signature

Date

Name (please print or type): _____

Title: _____

WAIVER OF HEARING

____ I certify that on behalf of TKCI I understand my right to a hearing regarding the imposition of the proposed administrative fine and that as an authorized representative of TKCI, I hereby waive those rights. The fine payment in the amount of \$6,000 paid to Treasurer, State of New Hampshire is enclosed.*

** If any portion of the payment is made by a check, draft, or money order which is returned or dishonored due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.*

Signature

Date

Name (please print or type): _____

Title: _____

RETURN THIS PAGE ONLY TO:

James Ballentine, DES Enforcement Paralegal
Department of Environmental Services
6 Hazen Drive
P.O. Box 95
Concord, NH 03302-0095